

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1520

INTRODUCER: Senator Hutson

SUBJECT: Licensure of Child Care Programs

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Pre-Meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1520 amends the law related to child care facilities. It revises legislative intent related to child care facilities to clarify that membership organizations affiliated with national organizations which provide child care as defined in s. 402.302, F.S., are considered to be child care facilities and are therefore subject to licensing requirements or minimum standards for child care facilities.

The bill redefines ‘after-school program’ in s. 402.302, F.S., to include all programs offering child care for school-age children during out of school times. The bill exempts such programs that are offered by a school on school grounds, all programs that are solely instructional or tutorial, open-access programs, and programs providing child care exclusively for children in grades 6 through 12 from the licensure requirement.

The bill also removes an existing requirement that DCF adopt by rule a definition for child care which distinguishes between child care programs that require child care licensure and after school programs that do not require licensure.

The bill is anticipated to have a fiscal impact on state government.

The bill has an effective date of July 1, 2018.

II. Present Situation:

Legislative Intent Related to Child Care and Child Care Facilities

Florida law provides that for parents who choose child care, it is the intent of the legislature to protect the health and welfare of children in care. To accomplish this, the law provides a

regulatory framework that promotes the growth and stability of the child care industry and facilitates the safe physical, intellectual, motor, and social development of the child.¹ Florida law also provides that it is the intent of the legislature to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care.² To further that intent, laws were enacted to:

- Establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to provide for enforcement to regulate conditions in such facilities through a program of licensing; and³
- Require that all owners, operators, and child care personnel shall be of good moral character.⁴

Child Care

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.⁵

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.⁶ The definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- A school-age child care program is defined as any licensed child care facility serving school-aged children⁷ or any before and after school programs that are licensed as a child care facility and serve only school-aged children.⁸
- Any of the after school programs accepting children under the age of the school-age child must be licensed.⁹
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.¹⁰

¹ Section 402.26, F.S.

² Section 402.301, F.S.

³ Sections 402.301 - 402.319, F.S.

⁴ Good moral character is based upon screening that shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. *See s. 402.305, F.S.*

⁵ Section 402.302, F.S.

⁶ *Id.*

⁷ Chapter 65C-22.008, F.A.C. "School-age child" means a child who is at least five years of age by September 1st of the beginning of the school year and who attends kindergarten through grade five.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Child Care Facilities

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.¹¹ The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509, F.S.,¹² which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435, F.S.¹³

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies¹⁴ approved by the department are the entities responsible for the licensure of such child care facilities.¹⁵

Additional Exemptions

In 1974 and in 1987, the legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards.

Child care facilities that are an integral part of church or parochial schools and meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility’s exemption from licensure.¹⁶

The exemption for membership organizations¹⁷ was broader and allowed personnel to have contact with children without being background screened.¹⁸

¹¹ Section 402.302, F.S.

¹² “Transient public lodging establishing” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

¹³ Section 402.302, F.S.

¹⁴ Currently, there are 5 counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota. Department of Children and Families, 2015 Agency Legislative Bill Analysis. HB 11, December 8, 2014.

¹⁵ Section 402.308, F.S.

¹⁶ Section 402.316, F.S.

¹⁷ Membership organizations would include such groups as Big Brothers Big Sisters, Boys and Girls Clubs, YMCA’s, and Boy Scouts or Girl Scouts.

¹⁸ Chapters 74-113 and 87-238, Laws of Florida.

Attorney General Advisory Legal Opinion

In 2000, the Florida Office of the Attorney General issued an opinion relating to the issue of child care, child care facilities and licensure. At issue was whether or not the child care programs operated by the YMCA or other membership organizations were exempt from licensure by the department as child care facilities. The opinion issued stated that programs operated by YMCAs and other membership organizations that fall within the definition of a “child care program,” are not exempt from licensure by the Department of Children and Families.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 402.301, F.S., related to legislative intent and policy, by requiring that membership organizations that provide child care services are subject to licensing requirements and minimum standards for child care facilities.

Section 2 amends s. 402.302, F.S., related to child care facilities, by defining an after-school program as a program offering child care for school-age children during out of school times, including but not limited to, before school or after school.

The bill specifically provides the following exceptions to the term ‘after-school program:’

- A program on a school site that is operated by a school or through a formal agreement between the school and a provider to serve children who attend the school;,
- All programs that are solely instructional or tutorial;
- Open-access programs²⁰; and
- Programs providing child care exclusively for children in grades 6 through 12 that do not hold a Gold Seal Quality Care designation under s. 402.281, F.S.²¹

Section 3 amends s. 402.305, F.S., by removing a requirement that DCF adopt by rule a definition for child care which distinguishes between child care programs that require child care licensure and after school programs that do not require licensure.

Section 4 amends s. 39.201, F.S., to correct a cross reference to a provision in s. 402.302, F.S., relating to child care facilities.

Section 5 amends s. 402.317, F.S., to correct a cross reference to a provision in s. 402.302, F.S., F.S., relating to child care facilities.

Section 6 amends s. 435.07, F.S., to correct a cross reference to a definition in s. 402.302, F.S., relating to child care facilities.

¹⁹ Florida Office of the Attorney General. Advisory Legal Opinion, Number AGO 2000-67. November 17, 2000.

²⁰ Open-access programs or institutions are generally considered programs open to receiving all potential applicants; however, the term is not currently defined in any provision of the Florida Statutes.

²¹ A child care facility, large family child care home, or family day care home that is accredited by an accrediting association approved by the department are able to receive a separate “Gold Seal Quality Care” designation, subject to requirements set forth in s. 402.281, F.S., and in rule though the Florida Administrative Code.

Section 7 amends s. 1002.82, F.S., to correct a cross reference to a provision in s. 402.302, F.S., relating to child care facilities.

Section 8 amends s. 1002.88, F.S., to correct a cross reference to a provision in s. 402.302, F.S., relating to child care facilities.

Section 9 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Membership organizations currently providing child care services will likely need to pay licensure fees to DCF as they will be required to obtain licensure as child care facilities.

B. Private Sector Impact:

Membership organizations requiring licensure under the bill may need to make changes to their practices and/or facilities to achieve and maintain proper licensure standards. The impact of such changes is indeterminate.

C. Government Sector Impact:

The bill may lead some membership organizations currently providing child care services to refrain from doing so, and children currently served by those organizations might need to be absorbed by school-operated programs, which may have an indeterminate impact on schools.

DCF will likely need to employ additional Full-Time Equivalent employees (FTEs) to inspect organizations and programs now licensed under the bill. The impact to the department is indeterminate.

VI. Technical Deficiencies:

The term “open-access program” used in the amended provision of s. 402.302, F.S., is not defined in chapter 402, F.S., nor anywhere else in statute.

VII. Related Issues:

The provision that requires certain membership organizations be licensed as child care facilities is found in a legislative intent section of the law. The effect of that placement is that the legislature “intended” for certain membership organizations to be licensed as child care facilities, but there is no provision in the substantive law actually requiring these organizations to obtain licensure. Substantive provisions should not be included in an intent section.²²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.301, 402.302, 402.305, 39.201, 402.317, 435.07, 1002.82, and 1002.88

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²² The Florida Senate, Office of Bill Drafting Services. Manual for Drafting Legislation. Sixth Edition. 2009